



UNITED STATES DEPARTMENT OF COMMERCE
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18M2/0530

EXAMINER	
RUGGEL, J	
ART UNIT	PAPER NUMBER
1811	6

DATE MAILED:

05/30/95

Below is a communication from the EXAMINER in charge of this application
COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- ☐ is extended to run _____ from the date of the Final Rejection
- ☐ continues to run _____ from the date of the Final Rejection
- ☒ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date that the shortened statutory period for response expires as set forth above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 5-18-1995, has been considered with the following affect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
 - ☐ They raise new issues that would require further consideration and/or search. (See Note).
 - ☒ They raise the issue of new matter. (See Note).
 - ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: See attachment.

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing of an appeal, the proposed amendment ☐ will be ☒ will not be, entered and the status of the claims in this application would be as follows:

Allowed claims: none
Claims objected to: none
Claims rejected: 1-9 and 22-24

However;

- ☐ The rejection of claims _____ on references is deemed to be overcome by applicant's response.
 - ☐ The rejection of claims _____ on non-reference grounds only is deemed to be overcome by applicant's response.
4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection.
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

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1. The proposed amendment to page 7, line 32, raises issues of new matter under 35 U.S.C. 132, and to the extent the proposed amendment would affect the definition of "Pemulen" as used in the claims it would raise issues under 35 U.S.C. 112, first paragraph, as well. The USP excerpt has been considered but is not deemed to support the definition of "Pemulen" inserted into the specification. Firstly, the excerpt does not state that "Pemulen" is a tradenamed form of Carbomer 1342; the excerpt does not appear to mention "Pemulen" at all. The specification at page 7, line 31, implies that carbomers and "Pemulen" are different, not synonyms. Secondly, the excerpt does not support inclusion in the definition of the descriptive terms "emulsifier" and "C10-30 Alkyl Acrylate". Thirdly, the definition inserted into the specification does not include any reference to the cross-linking agent, carboxylic acid content, and viscosity mentioned in the USP excerpt.

2. The remainder of the proposed amendments would have been entered had they been submitted separately, with the proviso that the amendment to page 8, line 23 should instead be made to line 22.

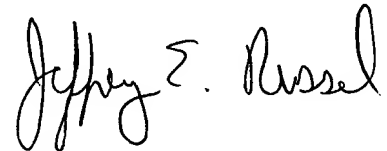
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3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey E. Russel at telephone number (703) 308-3975. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached at (703) 308-4037. The fax number for Art Unit 1811 is (703) 305-7362 and the telephone number for the Group 180 receptionist is (703) 308-0196.



Jeffrey E. Russel

Primary Patent Examiner

Art Unit 1811

JRussel
May 26, 1995